Supreme Court, U.S.
FILED

95 1 4 26 JAN 10 1996

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No.

In The

Supreme Court of the United States

OCTOBER TERM, 1995

THE ESTATE OF MAURICE HANSEN,

Petitioner,

v.

THE CITY OF NEW HAVEN,

Respondent.

Petition For Writ Of Certiorari To The United States Supreme Court From A Denial Of Said Writ Of Certiorari To The Supreme Court Of The State Of Connecticut

PETITION FOR WRIT OF CERTIORARI

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March 5, 1996

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QUESTIONS PRESENTED

The questions presented for review are as follows:

1. Did the trial court err in denying the Appellant's motion to articulate the factual basis for its findings regarding the actual performance dates of the contract in question, where the clear weight of the evidence indicated that the Plaintiff performed for a period of one year under the contract, but the Court found performance for only nine months.

2. Did the Appellate Court err when it granted Appellant's Motion for Review but denied the only relevant Relief requested that the trial judge be ordered to articulate the factual basis for his decision to only award damages for nine months.

3. Did the trial court err when it denied Appellant the damages requested for his year's performance, thereby amounting to a denial of Appellant's entitlement to appeal and his property interest in said appeal, thereby denying Appellant his procedural due process of law.

4. Did the Court err in considering count two, the restitutionary count, prior to count one, the breach of contract count, thereby deciding the equitable relief issue without exhausting the legal relief issues first.

5. Did the trial court err in denying both legal and equitable remedies herein.

PETITION FOR WRIT OF CERTIORARI

The Estate of Maurice Hansen respectfully petitions for a writ of certiorari to review the judgment in this case of the Supreme Court of the State of Connecticut.

OPINIONS BELOW

The opinion of the Appellate Court of the State of Connecticut, in appeal number 13380, in *Maurice Hansen et al. v. City of New Haven et al*, argued on April 20th, 1995, before Dupont, Schaller and Spear, Judges, and reported by memorandum of decision in 38 Conn. App. 902, whereby said Judgement of the Superior Court was affirmed; On writ of certiorari to the Connecticut Supreme Court, docket number PSC-94-0370, further was denied on or about September 13, 1995.

Appellant appealed to the Appellate Court of the State of Connecticut. On May 23rd, 1995, the Appellate Court affirmed. Appellant then filed a petition for certification to appeal to the Supreme Court of the state of Connecticut, which was denied on September 13, 1995. On September 22, 1995, Appellant filed a motion to reconsider said denial, which was again denied by the State Supreme Court on **October 16th, 1995**. Appellant files this petition for certiorari within ninety days, or by January 13th, 1996.

JURISDICTION

The Supreme Court denied petitioner's writ of certiorari and said petition to reconsider. The Jurisdiction of this Court is invoked under 28 U.S.C. Section 1257.

PERTINENT CONSTITUTIONAL PROVISIONS

Connecticut Statute 52-263 gives appellant a statutory right to appeal if aggrieved. Once aggrieved by any finding of a superior court inconsistent with law or evidence, appellant's statutory entitlement becomes a property interest pursuant to the Fifth and Fourteenth Amendments. Appellant alleges a property-monetary interest in said appeal since he was denied the full benefit of his entire year-long performance. He is denied the procedure due him because the judge failed to articulate the factual basis for his award of damages for only nine months, and his failure to award restitution from that point on. The relevant Fourteenth Amendment provision is: "No state shall deny any person of life, liberty, or property, without due process of law".

STATEMENT OF THE CASE

Appellant performed moving and storage services for the City of New Haven pursuant to a written contract. Appellant performed these services for over six months, when he received no compensation from the City although they were to pay Appellant monthly. At the end of six months, Appellant could no longer afford to work

for nothing, and he informed the City of his intent to rescind in May or June, or after six months into the contract. Appellant agreed to continue performing for the City, but would seek restitution of all moves and storage at the State of Connecticut rate or charges. Appellant continues to perform until the end of the year, but receives no further compensation. He does receive a late check for approximately $5,000.

Plaintiff originally sued in a two count complaint, alleging breach of contract in count one and restitution in count two. The Judicial Authority had a problem with the inconsistent causes of action, and only agreed that said allegations were proper under the practice book when corporation counsel admitted it could be done. The trial court determined the equitable cause of action first, prior to entertaining the legal cause of action. This resulted in an erroneous determination regarding the actual dates of performance under the contract. The trier of fact erred thereby depriving the estate of Appellant monies due. Appellant testified that he performed for the entire contract period. He also submitted bills illustrating this fact. All Appellee witnesses testified they did not know how long Plaintiff continued to perform. The trier of fact in his memorandum of decision on page five, quotes a letter written from appellant's counsel stating that appellant is rescinding the contract but will perform until such time as the city rebids the contract. Plaintiff expects restitution from this point. Appellant is entitled to his damages on the contract through the date of rescission, and then his restitution from that date until the end of the contract period. The trier has erred in determining the equitable issues before the legal issue regarding damages, contrary

to case law and the Connecticut Practice Book. Plaintiff is entitled to his restitution herein, and since the dates of performance are not clear from the record, the Appellate Court should have sent this case back for a retrial as to those material dates of performance under the contract. Appellant specifically requested an articulation of these dates by the trier, which was denied by both the superior and the appellate courts. Appellant is denied a property right in this appeal, due to the error stated. Lastly, both legal and equitable remedies have to be available to Appellant because until the Court found the proper date of rescission, thereby determining the expectation of the Plaintiff, then Restitution would have to be the only available remedy for performance from that date until the end of the contract period.

REASONS FOR GRANTING CERTIORARI

The federal question was first raised before Appellate Court when motion to articulate was denied by the judge, and appellate court denied motion for review. That court summarily affirmed. The Interests of Justice merit review here.

CONCLUSION

For the reasons stated, this Petition should be heard.

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